ONTARIO
ADVISORY COUNCIL
ON WOMEN'S ISSUES

CONSEIL CONSULTATIF
DE L'ONTARIO SUR LA
CONDITION FÉMININE

91-06887/

RECOMMENDATIONS FOR CHANGES TO THE EMPLOYMENT STANDARDS ACT

OCTOBER 1989

ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES
CONSEIL CONSULTATIF DE L'ONTARIO SUR LA CONDITION FÉMININE

18•October•89

Honourable Mavis Wilson
Minister Responsible for
Women's Issues
777 Bay Street, 17th Fl.,
Toronto, Ontario
M5G 2E5

Dear Ms. Wilson:

On behalf of the Ontario Advisory Council on Women's Issues, it is my pleasure to present to you our recommendations on changes to the Employment Standards Act.

The Advisory Council has always viewed women's economic status as of paramount concern. We have made numerous recommendations on employment related issues since our establishment in 1973. Our review of the E.S.A. illustrates our ongoing commitment to ensure that policies are in place that will guarantee economic equality for all women.

As usual, we have consulted widely with women's groups, individuals, business and community organizations, and other interested participants, and our recommendations reflect their concerns.

We are confident that you will review these recommendations with your cabinet colleagues and that the Ontario government will want to play a leadership role in ensuring economic equality for women.

Sincerely,

Sandra Kerr
President

cc: Premier Peterson
Honourable Gerry Phillips

COUNCIL MANDATE

The Ontario Advisory Council on Women's Issues was established at arms-length from the government in 1973, and is in a unique position to effectively challenge the government's direction and policies. Council's mandate is to advise the Ontario government on all matters pertaining to the achievement of economic, social and legal equality for women and without limiting the generality of the foregoing: to respond to requests from the Minister for advice, consultation; to hold public meetings with the purpose of stimulating public discussion and accessing the opinions of women; to identify the specific areas requiring the attention of government and to recommend legislation and program changes to the Minister Responsible for Women's Issues. There are 15 members, all of whom are appointed by Cabinet on a part-time basis. Meetings are held in Toronto and work on identified issues done through committees. Council brings a balance of women's views from across the Province to the government's attention.

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SUMMARY OF RECOMMENDATIONS

NEED FOR IMMEDIATE LEGISLATION

Rec. 1

That the Government table comprehensive new employment standards legislation immediately. If issues remain to be reviewed, they should be included in a second stage of the legislation to be tabled within two years.

Rec. 2

That the new E.S.A. include a preamble with a statement of fundamental principles which includes the universal right to:

- fair employment practices,
- employment equity,
- a workplace that is free of racial harassment and discrimination, free of sexual harassment and a workplace that is accessible; and
- support for a realistic mesh of family and workplace responsibilities.

STANDARDS BY STATUTE AND NOT REGULATION

Rec. 3

That the new E.S.A. contain all legal rights within the statute itself, and the powers to make Regulations under the existing s.65 be significantly curtailed.

UNIVERSAL COVERAGE

Rec. 4

That "dependent contractors" be expressly defined and included as "employees" within the E.S.A.

Rec. 5

That the definition of "homework" in s.1(g) of the E.S.A. be amended to include all types of modern-day homework situations.

Rec. 6

That the definition of "employee" be extended to include both or all participants where the actual work is done by more than the party to the employment contract.

Rec. 7

That an immediate public review commence to assess the justification (if any) for all exemptions and special treatment under the Act; and

That all exemptions and special treatment be eliminated unless justifiable by reference to the Charter of Rights and Freedoms.

Rec. 8

That all justifiable exemptions and special treatment be included in the statute itself, introduced as a second stage to a new E.S.A.

Rec. 9

The existing discrimination against part-time, seasonal, casual and other non-regular employees in all Ontario legislation and policies should be ended.

Rec. 10

As a general principle, all employment benefits and minimum labour standards available to full-time workers should be available to part-time and other non-regular workers on a pro-rated basis or by compensation in lieu thereof.

Rec. 11

Wherever possible, qualification requirements for specific standards and benefits should be reduced or eliminated. Where they must remain, all workers should be able to accumulate the requirements on a calendar year basis, and if equitable and appropriate, on an hours of work basis.

Rec. 12

Laws which prohibit the organization of part-time and non-regular workers, and policies which segregate part-time workers from full-time workers doing the same work, should be eliminated.

STATUTORY LIMITATIONS

Rec. 13

That s.47(1)(c) of the E.S.A. be amended to repeal any monetary limitation on the amount of earned wage claims that may be assessed on behalf of individual employees.

Rec. 14

That s.63 of the E.S.A. be amended to impose no time limitation on the amount of claims that may be assessed retroactively on behalf of individual complainants.

Rec. 15

That s.63 of the E.S.A. be amended to provide that the limitation period after which complaints will not be pursued by the Branch shall be 5 years after termination of employment with the employer.

Rec. 16

That s.11 of the E.S.A. be amended to impose a duty on employers to keep all records relevant to a particular employee for 5 years after the employee has terminated work with the employer.

MINIMUM WAGE

Rec. 17

a) That the minimum wage be increased to a "livable wage" as a fixed percentage of average industrial wage.

b) That the minimum wage standard be defined by statute, and increased each year keeping pace with changes in average industrial wages.

Rec. 18

That the student minimum wage be abolished, and students also be entitled to the benefit of the 3-hour minimum reporting pay.

Rec. 19

That the tip differential be abolished, and tips and gratuities be treated as "wages" or alternatively, the E.S.A. provide explicitly that tips and gratuities are the property of the employee and are not to be withheld, or deductions made therefore, by the employer regardless of any consent by the employee; and

That the practice of projecting tip income for income tax purposes be eliminated.

Rec. 20

That homemakers and residential care workers qualify for the minimum wage and overtime in the same way as do domestic workers, and there should be no capping on the hours of work.

Rec. 21

That homeworkers be guaranteed the minimum wage for all their work and services. To compensate for unpaid overhead costs, the E.S.A. should provide that homeworkers be given the option of being paid a non-taxable "overhead bonus" (a percentage of their wages); or of deducting costs of operating their business under income tax policy.

Rec. 22

That fruit, vegetable and tobacco harvesters, and all other farm workers, be guaranteed the minimum wage.

HOURS OF WORK AND OVERTIME

Rec. 23

That parts IV and VI of the E.S.A. be amended to provide that hours of work shall be no more than eight hours per day and 40 hours per week, and that overtime pay at the rate of one and one half times the regular rate shall be paid for all hours in excess of that standard, or time in lieu to a specified limit; and

That such standard apply to all employees in Ontario, and that existing exemptions and special treatment with respect to hours of work and overtime be evaluated with a view to achieving equality in access to standards as soon as possible.

Rec. 24

That the existing permit system be eliminated, and all employers be entitled to 250 hours above the statutory standard per year per employee, and that any excess hours above that rate be available only with the consent of the Director, and the union, or where no union exists, the workers affected; and

That the implementation and termination of compressed workweeks, averaging arrangements, and other alternative regular worktime schedules be permitted with the written consent of the union, or where no union exists, the affected workers.

Rec. 25

That the right to refuse overtime work be available to all full-time workers after eight hours per day or 40 hours per week, and that such residual right to refuse overtime work remain notwithstanding a general consent (by the union or by workplace practice) to work excess hours, or to a regular alternative work schedule; and

That the right to refuse overtime work extend on an equal basis to all part-time employees who do not wish to work extra hours beyond their regular schedule; and

That any disputes as to hours of work or overtime be referred to adjudication under the E.S.A. on an expedited basis, and that unions or the affected workers have access to all information relevant to hours of work issues.

Rec. 26

That a minimum labour standard providing a minimum of 36 consecutive hours of free time per workweek be available to all workers, with the additional provision that there be no encroachment on this free time, even with the consent of the worker;

That all domestic workers, including homemakers, be entitled to the same standards as to hours of work and overtime as are other employees; and

That the E.S.A. define work, for all employees including domestics, homemakers, and other "live in" types of employees, to include time that the employee is required to be on the premises.

PUBLIC HOLIDAYS

Rec. 27

That the number of statutory public holidays in Ontario be increased to 10, adding the August Civic holiday and a Family Day in February to the existing public holidays; and

That the exemptions in s.26(1) of the E.S.A. and all existing exclusions by regulation be deleted, so that all employees in Ontario are entitled to a minimum of 10 public holidays per year; and

That where, for any reason, any employee or group of employees cannot be covered by the public holiday standard, the statute should provide that they be paid 4% of their wages as public holiday pay.

That s.27(2) be deleted so that the hours an employee works on a public holiday be considered when calculating any overtime pay to which the employee is entitled for the work week in which the public holiday occurs.

VACATION WITH PAY

Rec. 28

That the minimum vacation with pay standard be upgraded to provide three weeks vacation after one year of employment; and

That vacation pay at the minimum rate of 3/52nds of wages be payable to all employees; and

That, for the purpose of qualifying for vacation with pay, employees be able to accumulate years of service by hours of work, or by calendar years, indefinitely; and

That the vacation with pay standard specify that the service need not be continuous, but that entitlement will continue on an accumulated basis so long as there is no absence from the place of employment for more than 8 months.

EQUAL PAY FOR EQUAL WORK

Rec. 29

That the definition of "establishment" in s.1(f)(a) of the E.S.A. be repealed and a new definition enacted to provide that "establishment" extend to all locations of the same employer, including all related corporate and unincorporated enterprises, associations, syndicates, franchises, or successors; and that the definition not be limited by geographic or functional considerations.

Rec. 30

That s.33(1) of the E.S.A. be amended to allow for comparisons between jobs which are substantially equivalent on a composite evaluation of skill, effort, responsibility, and working conditions.

Rec. 31

That all exemptions to s.33(1) of the E.S.A. be repealed.

Rec. 32

That "rate of pay" for the purpose of s.33(1) include all monetary and non-monetary compensation for the jobs under comparison.

Rec. 33

That s.33 codify the concept of an "established job rate"; and that once the rate of pay has been established for a particular job, there be a statutory prohibition against any reduction of that job rate; and

That there also be specific statutory prohibitions against:

a) replacing a male employee with a female employee at less than the established job rate paid the replaced employee, and

b) reducing any established job rate after an order for parity has been made.

BENEFIT PLANS

Rec. 34

That Part X of the E.S.A. be extended to include protection from discrimination with respect to all benefits.

Rec. 35

That prohibition against discrimination specifically extend to protection from discrimination on the basis of sexual orientation, age without the existing limitation (18-64 years), and on the basis of hours of employment; and that amendments be made to the Ontario Human Rights Code to provide this protection.

Rec. 36

That Ont. Reg. 282, s.8(c) and s.10 be repealed, and provision made that all employees are entitled to continued participation in all benefit plans (including insurance and pension schemes) during any leave of absence from work.

Rec. 37

That implementation of the Pension Benefits Act and the amended E.S.A. Regulation with respect to pensions be monitored carefully; and the relationship between these provision and the Ontario Human Rights Code be studied.

Rec. 38

That the interministerial workgroup on insurance advise the public forthwith of the continuing discrimination which exists in the insurance industry, and bring forward remedial legislation immediately.

LEAVE FOR CHILD CARE AND FAMILY RESPONSIBILITIES

Rec. 39

That Part XI of the E.S.A. be repealed and replaced with a new standard to provide pregnancy leave after six months of service (including service accumulated indefinitely by part-time, seasonal, casual, elect to work, and other non-regular workers).

Rec. 40

That the pregnancy leave standard include:

a) a prohibition against any employer requiring an employee to take a leave of absence because of pregnancy, except as provided in (b);

b) where, the employee is unable to perform the essential duties of her job because of pregnancy, a duty on the employer to make reasonable accommodation, and only if an alternative appropriate position is not available (proof thereof on the employer) should the employee be required to start her leave.

Rec. 41

That the new pregnancy leave standard provide that all employees are entitled to:

a) the accumulation of all pension, health, disability, seniority and other benefits during the leave, and recognition that the term of the leave is a period of "continuous service" for the purpose of any service requirements (statutory or otherwise);

b) continuation of all employer's contributions to all pension or other benefit plans, so long as the employee continues her contributions as well;

c) written notice, in a timely fashion, of every employment promotion or training opportunity that arises during the leave;

d) protection from any dismissal, suspension, lay-off, demotion, discipline, denial of promotion or training because of pregnancy application or for taking pregnancy leave. Such protection to continue for six months after the employee's return to work.

Rec. 42

That the pregnancy leave standard provide for the right to pregnancy leave of 18 weeks.

Rec. 43

That the new Part XI of the E.S.A. provide the right to leave for parents with childcare responsibilities, to be taken by either parent, for up to 35 weeks, to kick in (at the choice of the employee) at the birth of the child, when the child comes into the care of the employee, or when the mother finishes her pregnancy leave; and as well, there should be similar protections as recommended for pregnancy leave.

Rec. 44

That the new Part XI of the E.S.A. provide the right to adoption leave for either parent for up to 35 weeks after placement of the child with the employee for adoption; and as well, there should be similar protections as recommended for pregnancy leave.

Rec. 45

That Part XI of the E.S.A. provide for all employees, without any service qualifications, the right to unpaid leave for personal reasons (including family responsibilities) of up to 10 days per year; and as well there should be similar protections as recommended for pregnancy leave.

Rec. 46

That Part XI of the E.S.A. provide for all employees, without any service qualification, the right to paid bereavement leave of a minimum of three working days for all employees on the death of a family member ("family" to be defined very broadly to accommodate all types of contemporary families); and as well, there should be similar protections as recommended for pregnancy leave.

ADDITIONAL LEAVE STANDARDS

Rec. 47

That the E.S.A. include provisions for employees who wish time off for an approved education leave, and that all employees with 2 years of service, be eligible, including service accumulated by part-time and non-regular workers. The education leave should provide job protection, continuation of seniority and other benefits, continued employer's contributions to benefits and deemed "continuous service".

Rec. 48

That the E.S.A. be amended to ensure that employers allow employees to observe their religious days by giving them leave without pay.

Rec. 49

That a sick leave standard be added to the E.S.A. to provide that all employees, with three months of service (including service accumulated indefinitely by part-time, seasonal, casual and other non-regular employees) have the right to:

a) protection from dismissal, suspension, layoff, demotion or discipline because of any absence due to illness or injury, where the absence does not exceed 12 weeks or as required by a worker's compensation rehabilitation program, and where a medical doctor certifies that the worker was incapable of working;

b) accumulation of all benefits and seniority during the leave, continued contributions by the employer to any pension or other benefit plans (on the condition that the employee maintains contributions as well), and deemed "continuous service" during the absence;

c) reinstatement in his or her previous job unless the employee is incapable of performing the essential duties of that job, whereupon the employer should be obliged to provide an alternative equivalent job. Only if the employer proves that no such job is available, should the legislation permit re-assignment to a different job with different conditions of work.

d) six days of fully paid sick leave per year.

Rec. 50

That the E.S.A. provide leave for those seeking public office, and that such a provision include:

a) job protection for the duration of any nomination and election campaign;

b) the same continuation of benefits, seniority, employer's contributions, and deemed "continuous employment" as with the pregnancy, childcare and sick leave standards.

JOB SECURITY STANDARDS

Rec. 51

That s.40(1) of the E.S.A. be amended so that provisions also specify that part-time, seasonal, casual, elect to work, and all non-regular employees be able to accumulate indefinitely, the service credits necessary to qualify for notice of termination of employment.

That the domestic workers on temporary status, arriving from a foreign country, be provided one weeks notice of termination or pay, with no service requirement if their employment contract is terminated within thirty days of their arrival in Canada.

Rec. 52

That all exemptions relating to notice of termination be examined, to the extent possible they should be eliminated, and those that remain should be included in the statute itself.

SEVERANCE PAY

Rec. 53

That s.40(a)(1a) of the E.S.A. be amended to provide that severance pay be payable to all employees who have had one year of continuous service with the employer, without regard to the number of employees laid off or the size of the employer's payroll.

Rec. 54

That s.40(a)(2)(a) of the E.S.A. be amended to provide that severance pay applies to all workers including seasonal, non-regular, casual and elect to work employees. These employees should be entitled to qualify by service to the same employer accumulated indefinitely.

Rec. 55

That s.40(a)(3)(d)(e)(f) of the E.S.A. excluding retirees, construction workers, etc. and elect to work employees, be deleted.

Rec. 56

That contract workers employed for a definite term or task be entitled to qualify for severance pay in the same manner as they do to notice of termination under the existing Regulation.

Rec. 57

That s.13 of the E.S.A. be amended to clearly include that contracting out, or loss of contract situations come within the "sale of business" concept for the purpose of continuity for service qualifications with the successor employer, or for immediate payout of notice of termination and severance pay.

Rec. 58

That s.14 of the E.S.A. be amended to ensure that the wages of contract employees have the same priority as wages of regular employees.

Rec. 59

That the E.S.A. provide protection for all workers from arbitrary dismissal; and the legislation provide that no employer dismiss or suspend an employee with three months service (including accumulated service) without just and reasonable cause; and that the unjust dismissal provision include:

a) a duty on the employer to provide written reasons for the dismissal upon written request from the employee;

b) a right to complain to the Employment Standards Tribunal within ninety days of the dismissal;

c) provision for appointment of an employment standards officer to attempt a settlement and, failing that, for appointment of an arbitrator to assess the nature of the conduct causing the dismissal or suspension, and to determine whether the action was "just" and "reasonable" in the circumstances of the individual case;

d) power in the arbitrator to order compensation, reinstatement, or any other remedy that is "just" and "reasonable" in the circumstance.

Rec. 60

That s.9 of the E.S.A. with respect to protection in garnishment and attachment situations be extended to include protection from any threats, discipline, penalties, intimidation or coercion; and

That enforcement of the provisions against reprisals and violations of provisions of the Act be removed from the context of quasi-criminal proceedings in Provincial Offence Court, and be within the exclusive jurisdiction of a newly-constituted Employment Standards Tribunal with powers to order reinstatement, restitution, and any other appropriate remedy, and to impose substantial penalties; and

That s.57, 59 and 60 of the Act and s.39(h) of Bill 114 be amended to reflect this new structure.

Rec. 61

That protection against sexual harassment in the workplace be provided in the E.S.A. and remedies provided under the Act as well as the Workers' Compensation Act; and

That the E.S.A. contain a broad definition of sexual harassment to include sexual assault, abuse, innuendo, exposure to pornography, pornographic abuse, or the production of pornography.

UNIVERSAL RIGHT TO COLLECTIVE BARGAINING

Rec. 62

That the E.S.A. provide that all workers (except those in a confidential relationship with management) have the right to form unions and to bargain collectively, and that there be no limitations on the bargaining agenda, except as dictated by public policies against discrimination; and

That the Ontario Labour Relations Act, the Crown Employees' Collective Bargaining Act, the Public Service Act, and all other statutes which impose limitations be amended to conform with this basic standard.

RIGHT TO EMPLOYMENT EQUITY

Rec. 63

That the Ontario Government table mandatory employment equity legislation, to include:

- a statutory duty on all employers to implement employment equity programs including data accumulation;
- goals and timetables for action;
- effective sanctions for failure to meet requirements;
- enforcement through complaints and systemic remedies.

Rec. 64

That the Ontario Government implement forthwith a comprehensive contract compliance program, making employment equity programs mandatory for all Government suppliers, for all the broader public sector and those funded with provincial funds, and for employers who provide goods and services to the broader public sector and to publicly-funded bodies.

ADMINISTRATION OF MINIMUM LABOUR STANDARDS

Rec. 65

That the Government commission an independent administrative law specialist to conduct a full analysis of administrative law and procedural deficiencies in the E.S.A., and make this report available for public discussion.

Rec. 66

That wherever possible, standards and procedures under the E.S.A. be structured to avoid the need for intervention or discretionary decision-making by the Director; and where the Director must retain such powers, the exercise of discretion be structured.

Rec. 67

That the existing ad hoc referee system be abolished, and an independent Employment Standards Tribunal created. The Tribunal should have exclusive jurisdiction to make final determinations on all matters of procedure and substance under the E.S.A.

Rec. 68

That the E.S.A. be amended to provide that employers and employees have equal rights to appeal to the Employment Standards Tribunal. The appeal period should extend for 30 days, and the Tribunal should have the authority to extend the appeal period on preliminary motion.

ENFORCEMENT OF THE ACT

Rec. 69

That the Ontario Government allocate staff and resources to the Employment Standards Branch to implement a pro-active approach to enforcement and compliance; and

That routine spot audits in problem industries be reinstituted on a regular basis, and extended company audits arising out of complaints be increased; and

That special attention be addressed to sectors who are difficult to reach, such as homemakers, multi-lingual and multi-cultural groups, and those who are illiterate.

Rec. 70

That penalties for violation of the E.S.A. be increased on an incremental scale; a warning that payment is required within 15 days to be issued in cases where wages are found to be owing; and failure to pay trigger an Order-to-Pay with an automatic statutory penalty of 50-100% of the amount due; and

That the Employment Standards Tribunal have express power to order an appellant pay the costs of an appeal, including the costs of the Tribunal, the Branch lawyer, and the employee; and the Tribunal have the authority to impose substantial monetary penalties on violators of the Act, or persistent offenders; and

That the Branch institute a tracking system to monitor persistent offenders; and

That the E.S.A. provide expressly that the employment standards officer and the Tribunal both have the power to order reinstatement, including interim reinstatement, and the retroactive payment of lost wages and benefits.

Rec. 71

That high profile, multi-lingual public education and publicity about minimum labour standards be instituted on a regular basis, to include:

- printed material;
- radio, television and newspaper spot announcements and more extended coverage;
- an automated summary information telephone line;
- systematic publishing of all Tribunal decisions;
- press releases on significant settlement and Tribunal decisions; and

That the Branch prepare an authorized summary of basic employment standards which employers by statute have a duty to post in all workplaces.

INTRODUCTION

The status of working women in Ontario is, to a large extent, determined by the Ontario Employment Standards Act. This law sets out basic standards for working women and provides women an opportunity to move towards equality. Basic labour standards which recognize the permanent and ongoing participation of women in the paid labour force, as well as family responsibilities of both men and women workers, provide the foundation for equality in employment, and are a pre-requisite to any other pay equity or employment policies and programs.

The **Employment Standards Act** (hereinafter called the E.S.A.) was passed in its present format in 1974. Subsequently, new standards have been added in response to particular problems, such as plant shutdowns during the economic recession of the early 1980s, and work on Sunday. A Commission was appointed to look into wage protection in insolvency situations,[1] and a Task Force to study hours of work and overtime. The recommendations of both initiatives remain to be dealt with. New Regulations have been defined to expand coverage in some cases, and to qualify it in others. Always these actions have been in response to pressure from particular groups.

The Ontario Advisory Council on Women's Issues believes the time has come to end the ad hoc tinkering with the **E.S.A.** Charter guarantees of equality have called into question many of the underlying assumptions of the existing legislation. The Government's stated commitment to employment equity makes it imperative that comprehensive new legislation be defined, dealing with both substantive and procedural issues. It is no longer good enough to say that the Act is "under review". It has been under review internally since at least 1976, and now the time has come to make minimum labour standards a priority.

Women's position within the labour market - their concentration in certain industries and occupations and their predominance in part-time positions - causes disadvantage because of the legislative limitations of Ontario's **E.S.A.**

Most women continue to bear the additional burden of prime responsibility for childcare and household responsibilities. Certain groups of women face additional disadvantages because they are Native Canadian, non-English speaking, immigrant, or because of their race, disability or sexual orientation. At present, many of these women workers (those who need it most) are excluded from some or all of existing minimum labour standards.

NEED FOR IMMEDIATE LEGISLATION

Rec. 1

That the Government table comprehensive new employment standards legislation immediately. If issues remain to be reviewed, they should be included in a second stage of the legislation to be tabled within two years.

Rationale

The presence of women in the paid labour market is not a reversible trend. Two-income families are common. Single parent families, largely headed by women, are increasing. Older divorced and separated women are re-entering the workforce, impelled by changing family support obligations. The majority of these women, however, are streaming into particular sectors of the economy.

The service sector is the fastest growing sector, employing 82.4% of all women working in Ontario,[2] and creating 80% of all new jobs. It has more low-paid jobs, more part-time and flextime, and fewer benefits than other areas of employment. Fewer women workers than men are unionized, and even fewer among part-time employees.

Free trade on this sector is very problematic and raises the concern that "rationalization" and concentration in a continent-wide economy will increase privatization, contracting-out, part-time work (at the expense of full-time employment), and pressure for lower labour standards. Also, it has been estimated that 44% of women's jobs in the manufacturing sector are threatened by free trade.[3]

It is imperative that the Government affirm its commitment to employment equity, and to a safety net of minimum community standards that will meet the needs of workers in this era of change and uncertainty. It is for this reason that the Advisory Council is strongly of the view that new employment standards legislation should be tabled immediately.

Rec. 2

That the new E.S.A. include a preamble with a statement of fundamental principles which includes the universal right to:

- **fair employment practices,**
- **employment equity,**
- **a workplace that is free of racial harassment and discrimination, free of sexual harassment and a workplace that is accessible; and**
- **support for a realistic mesh of family and workplace responsibilities.**

Rationale

We propose that the Bill contain a preamble with a statement of fundamental principles to educate the public and to interpret the Act.

The Bill should state that the purpose of minimum labour standards in Ontario is to ensure that all workers have equal access to employment and are protected equally by the law. These standards must reflect community values, and provide a safety net to facilitate adjustment to economic change.

STANDARDS BY STATUTE AND NOT REGULATION

Rec. 3

That the new E.S.A. contain all legal rights within the statute itself, and the powers to make Regulations under the existing s.65 be significantly curtailed.

Rationale

Minimum employment standards in Ontario at present are defined by the **E.S.A.** and by numerous Regulations.[4]

Whether or not particular types of workers are eligible for particular employment standards is determined only by a complex juxtaposition of the statute and the Regulations. Whether or not a particular standard means what it says in the statute is ascertained only with detailed consideration of the Regulations.

Often, the standards made available in the Act itself are modified, if not undercut, by the Regulations. There are numerous inconsistencies between provisions in the Act, and related provisions in the Regulations.

The Advisory Council is strongly of the view that the age for defining legal rights by Regulation has ended.

At present, there are 21 sub-sections to Section 65 of the **E.S.A.** These very broad powers in s.65 of the existing **E.S.A.** should be pruned, with a view to ensuring that all legal rights are defined completely in the statute itself.

UNIVERSAL COVERAGE

The Advisory Council is strongly of the opinion that minimum labour standards should apply to all workers within provincial jurisdiction.

In principle, the **E.S.A.** applies to every employment contract in Ontario, and no employer or employee shall contract out or waive any employment standard, except for a greater benefit.[5] In practice, numerous groups are expressly excluded from the benefits of the Act.

Definition of "Employee" and "Employer"

Rec. 4

That "dependent contractors" be expressly defined and included as "employees" within the E.S.A.

Rationale

"Independent contactors", are those individuals who work freelance or on retainer, independently, without supervision, providing their own materials, and determining their own hours of work and working conditions.

Dependent contractors, individuals who ostensibly perform paid work for themselves but who are subject to virtual control by, and are economically dependent on someone else, are particularly vulnerable. The **Ontario Labour Relations Act** for example, expressly defines "employee" to include a dependent contractor.[6] The **E.S.A.** should be amended to do the same.

Rec. 5

That the definition of "homework" in s.1(g) of the E.S.A. be amended to include all types of modern-day homework situations.

Rationale

"Homework" means "the doing of any work...in premises occupied primarily as living accommodation." Although performing homework is within the existing definition of "employee", many modern-day homeworkers (largely women) are excluded by the statutory definition of "homework" and "homeworker" in s.1(g) of the **E.S.A.**

The increasing number of women who work at home, doing data-processing, writing or selling (usually for one organization or agency) are not "doing any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof" and thus do not qualify as "homeworkers" under the Act. Usually characterized as "independent contractors", they are denied the benefits of the Act.

Rec. 6

That the definition of "employee" be extended to include both or all participants where the actual work is done by more than the party to the employment contract.

Rationale

Situations do arise (particularly between couples) where the employment contract is with one spouse, but the work is actually done by both. Because the second is not party to the contract, and not receiving wages directly, she (usually) is excluded from the benefit of the Act.

Abolition of Exemptions

Rec. 7

That an immediate public review commence to assess the justification (if any) for all exemptions and special treatment under the Act; and

That all exemptions and special treatment be eliminated unless justifiable by reference to the Charter of Rights and Freedoms.

Rationale

The **E.S.A.** is replete with exemptions which render large parts of the workforce exempt from some or all of the standards provided under the Act. Some idea of the extent of the exemptions can be gained from the statistics in the Report of the Ontario Task Force on Hours of Work and Overtime. There, it is estimated that 866,000 or 24.8% of paid workers in Ontario are exempt from the hours of work provision, and 728,000 or 20.8% from the overtime standard.[7] Many of these same groups are also excluded from the minimum wage, public holiday, and even the vacation with pay, standard.

Proclamation of the Charter of Rights and Freedoms puts this entire panoply of exemptions in dispute. The Charter guarantee of equality under the law does not require that all groups be treated the same. Nevertheless, the law should apply so that no group suffers any adverse effect, and any special treatment must be justified under the Charter.

Rec. 8

That all justifiable exemptions and special treatment be included in the statute itself, introduced as a second stage to a new E.S.A.

Rationale

This review should not be an excuse to delay introduction of a new **E.S.A.**, but should commence immediately, and, after extensive public consultation, should be introduced as the second stage of new comprehensive employment standards legislation.

Part-time, casual and non-regular workers

Rec. 9

The existing discrimination against part-time, seasonal, casual and other non-regular employees in all Ontario legislation and policies should be ended.

Rec. 10

As a general principle, all employment benefits and minimum labour standards available to full-time workers should be available to part-time and other non-regular workers on a pro-rated basis or by compensation in lieu thereof.

Rationale

In 1987, there were over 700,000 part-time workers in Ontario, of whom over 72% were women. These make up 15% of the employed labour force, or 11% of all women working.

Typically, part-timers work in the lowest wage ranges, they do not receive the same benefits available to full-time workers, and qualification requirements under the **E.S.A.** and other legislation,[8] deny them the benefits of even the minimum standards legislation.

Rec. 11

Wherever possible, qualification requirements for specific standards and benefits should be reduced or eliminated. Where they must remain, all workers should be able to accumulate the requirements on a calendar year basis, and if equitable and appropriate, on an hours of work basis.

Rationale

With any interruption or change of employment (more common among part-time than full-time employees), whatever eligibility may have been accumulated to date is lost. Those who work intermittently or at irregular intervals, on call, or on a temporary basis, will never qualify as "regular employees" able to benefit from the provisions of the Act.[9]

Rec. 12

Laws which prohibit the organization of part-time and non-regular workers, and policies which segregate part-time workers from full-time workers doing the same work, should be eliminated.

Rationale

All legislation and policies which discriminate against, or segregate part-time employees, should be eliminated. Part-time and other non-regular workers should be brought into the mainstream and provided with the same standards and benefits as are available to other workers.

STATUTORY LIMITATIONS

Rec. 13

That s.47(1)(c) of the E.S.A. be amended to repeal any monetary limitation on the amount of earned wage claims that may be assessed on behalf of individual employees.

Rationale

S.47(1)(c) provides generally that no claims in excess of $4,000.00 will be pursued on behalf of individual employees. No justification has been given for any upper limit on the amount of wages that could be collected on behalf of individual employees under the Act. (There is no such limitation with respect to severance pay claims).

Rec. 14

That s.63 of the E.S.A. be amended to impose no time limitation on the amount of claims that may be assessed retroactively on behalf of individual complainants.

Rationale

A secondary statutory limitation concerns retroactivity, i.e. that the Director (of Employment Standards, hereinafter called 'the Director') may not initiate a proceeding nor an employee recover any monies due "more than two years before the facts upon which the proceeding...is based first came to the knowledge of the Director."[10] The vague and ambiguous wording of this provision is unclear and highly controversial.

Rec. 15

That s.63 of the E.S.A. be amended to provide that the limitation period after which complaints will not be pursued by the Branch shall be 5 years after termination of employment with the employer.

Rec. 16

That s.11 of the E.S.A. be amended to impose a duty on employers to keep all records relevant to a particular employee for 5 years after the employee has terminated work with the employer.

Rationale

Whereas the amount that can be collected should not be limited, there may be justification for setting a time limit on when claims may be laid.

These limits should be consistent with the requirements imposed on employers to keep records of employment, which in s.11 of the E.S.A. is a maximum of 5 years after the work is performed by the employee.

MINIMUM WAGE

Amount

Rec. 17

a) That the minimum wage be increased to a "livable wage" as a fixed percentage of average industrial wage.

b) That the minimum wage standard be defined by statute, and increased each year keeping pace with changes in average industrial wages.

Rationale

Minimum wage workers tend to be women, under 25 years of age, employed part-time -- the very characteristics which describe the working poor.

The Social Planning Council has estimated that to provide low-income workers with a "livable wage" reasonably related to the cost of purchasing the basic necessities of life, would require a 20% increase in the minimum wage.

No Exceptions

In principle, everyone who performs work for an employer is entitled to be paid the minimum wage, but numerous groups are exempted by Regulation, and others are subject to special minimum wage rates. All these exceptions should be reviewed, and where they cannot be justified under the Charter, should be revoked.

The most blatant of these anomalies include the reduced rate for students under 18 years of age; the tip differential for employees serving liquor; the limitation on wages that can be earned by homemakers and residential care workers; and the inequities in applying piecework wage rates to homeworkers and farmworkers.

a) Students

Rec. 18

That the student minimum wage be abolished, and students also be entitled to the benefit of the 3-hour minimum reporting pay.

Rationale

Under Ont. Reg. 285, students under 18 years of age who work less than 28 hours per week or during a school holiday, are paid at $3.90 per hour or 85 cents below the regular minimum wage,[11] although performing exactly the same work as students over 18 years of age, or as persons working more than 28 hours per week.

Also under Ont. Reg.285, s.8(4), when an employee "who is not a student" and who regularly works more than 3 hours, the employee shall still be deemed to have worked the 3 hours for the purpose of determining whether or not the minimum wage had been paid. Students are expressly excluded from the benefit of this reporting pay.

b) Employees Serving Liquor

Rec. 19

That the tip differential be abolished, and tips and gratuities be treated as "wages" or alternatively, the E.S.A. provide explicitly that tips and gratuities are the property of the employee and are not to be withheld, or deductions made therefore, by the employer regardless of any consent by the employee; and

That the practice of projecting tip income for income tax purposes be eliminated.

Rationale

Employees who serve liquor directly to patrons of licensed premises are paid at a reduced minimum wage.[12]

Ministry of Labour research data, completed in February 1981, indicated that some 21.3% of employees surveyed actually received tips which were less than the tip differential, and 6.7% reported combined wages and tip income which was less than the prevailing minimum wage.[13] The practice by income tax officials who project tip earnings, often creates hardship for persons who work in these positions.

A further problem with the treatment of tips under the **E.S.A.** is that tips and other gratuities are expressly excluded from the definition of "wages".[14] This enables employers, at will, to make deductions of service charges, "walk outs", and other set-offs from the tip income of employees.

c) Homemakers, Residential Care Workers, and Domestics

Rec. 20

That homemakers and residential care workers qualify for the minimum wage and overtime in the same way as do domestic workers, and there should be no capping on the hours of work.

Rationale

Domestics, nannies and sitters employed by a householder are entitled to the minimum wage without limitation, and, on paper at least,[15] have an overtime premium or time in lieu which kicks in after 44 hours.

However, homemakers "employed by a person other than a householder" are excluded from the record-keeping, hours of work and overtime benefits of the Act, and can receive at least the minimum wage for no more than 12 hours per day. Residential care workers are also exempted from hours of work and overtime benefits and their period of payment is capped at a maximum of 15 hours per day.

d) Piecework - homeworkers

Rec. 21

That homeworkers be guaranteed the minimum wage for all their work and services. To compensate for unpaid overhead costs, the E.S.A. should provide that homeworkers be given the option of being paid a non-taxable "overhead bonus" (a percentage of their wages); or of deducting costs of operating their business under income tax policy.

Rationale

The Advisory Council supports the principle that homeworkers (both those in the needle trades and the new breed of "electronic" and "office at home" homeworkers) should be guaranteed the minimum wage for all work and services provided. To compensate for unpaid overhead costs, homeworkers should be given the option of being paid a non-taxable "overhead bonus" (a percentage of their wages); or of deducting costs of operating their business under income tax policy.

e) Piecework - farmworkers

Rec. 22

That fruit, vegetable and tobacco harvesters, and all other farm workers, be guaranteed the minimum wage.

Rationale

Piecework in the payment of fruit, vegetable and tobacco harvesters also operates unfairly. Harvesters traditionally have been among the most underpaid and most exploited workers.

HOURS OF WORK AND OVERTIME

Full-time and Part-time Employees

Rec. 23

That parts IV and VI of the E.S.A. be amended to provide that hours of work shall be no more than eight hours per day and 40 hours per week, and that overtime pay at the rate of one and one half times the regular rate shall be paid for all hours in excess of that standard, or time in lieu to a specified limit; and

That such standard apply to all employees in Ontario, and that existing exemptions and special treatment with respect to hours of work and overtime be evaluated with a view to achieving equality in access to standards as soon as possible.

Rationale

Maximum hours of work under the **E.S.A.** are 48 hours per week or eight hours per day, unless otherwise permitted by the Director or by Regulation. Under the statute, longer hours are to be worked only with the consent of the employee or agent. Generally, overtime pay at the rate of one and one half times the regular rate is to be paid for all work in excess of 44 hours per week. These general rules, however, are subject to extensive exceptions.

The Regulations exempt 866,000 or 24.8% of paid workers in Ontario from the hours of work provisions of the Act.[16]

Rec. 24

That the existing permit system be eliminated, and all employers be entitled to 250 hours above the statutory standard per year per employee, and that any excess hours above that rate be available only with the consent of the Director, and the union, or where no union exists, the workers affected; and

That the implementation and termination of compressed workweeks, averaging arrangements, and other alternative regular worktime schedules be permitted with the written consent of the union, or where no union exists, the affected workers.

Rationale

There is an elaborate permit system, under which 100-hour permits, industry permits, and special permits issued by the Director, allow longer hours, in theory, with the consent of the employees involved.

To ease the administrative burden of granting 100-hour permits in every case, 26 industry-wide permits, mostly granted in 1944, are still in effect. These cover approximately 864,000 employees, or 33% of the 2.6 million workers not exempt from the hours of work provisions.[17] Almost half the workers affected by the industry permits are in retail sales; another one-quarter work in hotels, motels, resorts, restaurants, and taverns, all occupations dominated by women.

In addition, the Director has the discretion to authorize a compressed workweek (with normal workdays up to 12 hours per day),[18] and an averaging arrangement, whereby working hours and entitlement to overtime pay can be averaged over a scheduled two-week period.[19]

The Advisory Council is strongly of the opinion that this panoply of exemptions, permits, and special arrangements must end, and that all employees should have the benefit of minimum standards for hours of work and overtime.

Rec. 25

That the right to refuse overtime work be available to all full-time workers after eight hours per day or 40 hours per week, and that such residual right to refuse overtime work remain notwithstanding a general consent (by the union or by workplace practice) to work excess hours, or to a regular alternative work schedule; and

That the right to refuse overtime work extend on an equal basis to all part-time employees who do not wish to work extra hours beyond their regular schedule; and

That any disputes as to hours of work or overtime be referred to adjudication under the E.S.A. on an expedited basis, and that unions or the affected workers have access to all information relevant to hours of work issues.

Rationale

The Advisory Council is of the opinion that the right to refuse overtime work should be strengthened so that it is a meaningful right. At present, all those employees exempt from the hours of work provisions have no right to refuse overtime work. The arbitration jurisprudence has also held that where a union has consented to overtime work in a collective agreement, individual employees covered by that agreement cannot refuse overtime work. In addition, part-time employees who work extra hours beyond their regular shift have no right to refuse the work. In an age where Government policy is to encourage a mesh between workplace and family responsibilities, the residual right of individual employees to refuse overtime work without fear of reprisals must be a minimum statutory standard available to all. Such a standard should be enshrined in the statute, without exemptions, and should be subject to vigorous and effective enforcement.

Domestics[20]

Rec. 26

That a minimum labour standard providing a minimum of 36 consecutive hours of free time per workweek be available to all workers, with the additional provision that there be no encroachment on this free time, even with the consent of the worker;

That all domestic workers, including homemakers, be entitled to the same standards as to hours of work and overtime as are other employees; and

That the E.S.A. define work, for all employees including domestics, homemakers, and other "live in" types of employees, to include time that the employee is required to be on the premises.

Rationale

Those defined as "domestic servants" (companions, domestics and live-out sitters working less than 24 hours per week) and homemakers are totally exempt from the hours of work and overtime provisions, and from the right to refuse overtime work.[21]

There seems no apparent justification for differential treatment between different groups of domestic employees, and between domestics and other workers in Ontario. Domestics should have the same right to refuse overtime without fear of reprisals as do other employees, which should be after 40 hours of work.

The 36 hours of guaranteed "free time" each week should be absolute, with a prohibition on any encroachment thereof even with the consent of the employee. At present, too many live-in employees are expected to be "on call" or to be available for free babysitting. Employment and Immigration Canada considers that a domestic is working if she is required to be on the premises.[22] This is a broader, and more realistic standard, which should be incorporated into a statutory definition of work for all employees.

PUBLIC HOLIDAYS

Rec. 27

That the number of statutory public holidays in Ontario be increased to 10, adding the August Civic holiday and a Family Day in February to the existing public holidays; and

That the exemptions in s.26(1) of the E.S.A. and all existing exclusions by regulation be deleted, so that all employees in Ontario are entitled to a minimum of 10 public holidays per year; and

That where, for any reason, any employee or group of employees cannot be covered by the public holiday standard, the statute should provide that they be paid 4% of their wages as public holiday pay; and

That s.27(2) be deleted so that the hours an employee works on a public holiday be considered when calculating any overtime pay to which the employee is entitled for the work week in which the public holiday occurs.

Rationale

In Ontario, there are eight statutory public holidays over the year. However, in 1984, as many as 55.9% private sector employees, and 76.3% unionized employees, had 11 or more paid holidays per year.[23] There is no justifiable reason why 10 public holidays cannot be the minimum standard for all Ontario workers. We would suggest adding the August Civic Holiday and another day in February to be call "Family Day" as public holidays.

Consistent with our general position, the Advisory Council is strongly of the view that all exemptions to paid public holidays should be eliminated. In addition, there are thousands of workers who are exempted from public holidays by Regulation. Public holidays are a basic standard which improve working and living conditions, contribute to improved family life, and may lead to increased productivity.

VACATION WITH PAY

Rec. 28

That the minimum vacation with pay standard be upgraded to provide three weeks vacation after one year of employment; and

That vacation pay at the minimum rate of 3/52nds of wages be payable to all employees; and

That, for the purpose of qualifying for vacation with pay, employees be able to accumulate years of service by hours of work, or by calendar years, indefinitely; and

That the vacation with pay standard specify that the service need not be continuous, but that entitlement will continue on an accumulated basis so long as there is no absence from the place of employment for more than 8 months.

Rationale

At present, in Ontario, upon completion of 12 months of employment, an employee is entitled to vacation with pay of at least two weeks. All other employees not exempt by the Regulations are entitled to vacation pay equivalent to 4% of their wages.

The Advisory Council would suggest a graded standard based on years of service, with a minimum of three weeks after one year.

Where years of service are a requirement for qualification, the question arises as to how these standards can be applied to part-time, casual, seasonal, irregular workers, and those who change jobs or withdraw from the workforce. There is the concern that if the standard specifies "continuous service" or "uninterrupted service", women particularly, will lose the benefit. The payment of vacation pay as a proportion of wages provides one solution. Another, is to allow for accumulation of service, notwithstanding interruptions.

EQUAL PAY FOR EQUAL WORK

Rec. 29

That the definition of "establishment" in s.1(fa) of the E.S.A. be repealed and a new definition enacted to provide that "establishment" extend to all locations of the same employer, including all related corporate and unincorporated enterprises, associations, syndicates, franchises, or successors; and that the definition not be limited by geographic or functional considerations.

Rationale

The flaws in the new **Pay Equity Act**[24] make it all the more important that Part IX of the **E.S.A.** be upgraded to provide a remedy for those excluded from the new legislation.

The Advisory Council is strongly of the opinion that, as a first step, a properly-worded right to equal pay for equal work standard could provide greater employment equity in many situations. As a second step, the E.S.A. should be amended to provide equal pay for work of equal value, initially for all those not covered by the pay equity legislation. Thirdly, when the proactive period under the pay equity legislation has concluded, the **E.S.A.** should be amended to provide equal pay for work of equal value for everyone.

The existing equal pay standard in s.33(1) of the Act as interpreted at present, limits the extent to which the standard can be applied for the benefit of women. First, the work must be performed in the same establishment.

The Advisory Council is of the opinion that the definition of "establishment" under the **E.S.A.** should avoid geographic or functional definitions completely, and instead be defined broadly to include all related corporate and unincorporated entities.[25]

Rec. 30

That s.33(1) of the E.S.A. be amended to allow for comparisons between jobs which are substantially equivalent on a composite evaluation of skill, effort, responsibility, and working conditions.

Rationale

A second, and fundamental problem with the existing equal pay provision is the requirement that the jobs to be compared must be "substantially similar". that is "substantially similar" is not defined, and perceptions vary. It is clear, however, that each of skill, effort, and responsibility must be assessed separately, and if there is any extra skill or effort on the part of either the male or the female employee, the claim cannot be enforced.

Rec. 31

That all exemptions to s.33(1) of the E.S.A. be repealed.

Rationale

Another problem with the existing equal pay standard is the significant and extensive exemptions. These are defined to include seniority and merit systems, a system "that measures earnings by quantity or quality of production" and any "differential based on any factor other than sex".

Any merit system can inevitably be structured to the disadvantage of women. Many seniority systems make it inevitable that women cannot benefit. "Any factor other than sex" is so broad as to be virtually an invitation to manipulation. The track record of how the existing exemptions have been used to undermine equal pay for equal work, leads the Advisory Council to conclude that the equal pay standard should contain no exemptions whatsoever.

Rec. 32

That "rate of pay" for the purpose of s.33(1) include all monetary and non-monetary compensation for the jobs under comparison.

Rationale

Referees' decisions reveal further limitations under the existing legislation. In one case, for example, the referee found that the provision of a car to the man, but not to the woman, was not in violation of the Act, as a car was not "wages" and did not fall within the types of benefit plans provided for by the Act.[26] This clearly flaunts the intent of s.33 and calls for a redefinition of "rate of pay" under the equal pay provision.

Rec. 33

That s.33 codify the concept of an "established job rate"; and that once the rate of pay has been established for a particular job, there be a statutory prohibition against any reduction of that job rate; and

That there also be specific statutory prohibitions against:

a) **replacing a male employee with a female employee at less than the established job rate paid the replaced employee; and**

b) **reducing any established job rate after an order for parity has been made.**

Rationale

To avoid application of the Act, the employer need only move the man onto other work. If a woman moves into a "man's job," then she can be paid less, so long as there are no men working in the same job at the same time. This clearly invites employer manipulation to evade application of the Act. To avoid such erosion of the equal pay principle, the legislation should codify the concept of an "established job rate" (including all monetary and non-monetary compensation paid to the jobs under comparison).

BENEFIT PLANS

Rec. 34

That Part X of the E.S.A. be extended to include protection from discrimination with respect to all benefits.

Rationale

Although the **Ontario Human Rights Code** requires equal treatment in employment, the **E.S.A.** protection in Part X only applies to "a fund, plan, or arrangement" that provides superannuation, sickness, "or other similar benefits" or profit-sharing.

Rec. 35

That prohibition against discrimination specifically extend to protection from discrimination on the basis of sexual orientation, age without the existing limitation (18-64 years), and on the basis of hours of employment; and that amendments be made to the Ontario Human Rights Code to provide this protection.

Rationale

The **Ontario Human Rights Code** specifically prohibits discrimination in employment because of sexual orientation, yet O.H.I.P. (and other plans) offered to employees routinely discriminate in benefits available to homosexual households.[27]

Under Ont. Reg. 282, "age" is defined as in the **Ontario Human Rights Code**, as 18 years or more and less than 65 years. This is clearly the subject of a Charter challenge.

Benefits should be equally available to all employees without distinction, and the existing discrimination against part-time and non-regular employees in the provision of benefits should be banned.

Rec. 36

That Ont. Reg. 282, s.8(c) and s.10 be repealed, and provision made that all employees are entitled to continued participation in all benefit plans (including insurance and pension schemes) during any leave of absence from work.

Rationale

Ont. Reg. 282, s.8(c), appears to provide that it is not discrimination where an employee is excluded from benefits under a short or long-term disability insurance plan during pregnancy leave. Also, s.10 appears to say that a woman's right to continued participation in a benefit plan, fund or arrangement for a period beyond the statutory pregnancy leave is conditional on whether the plan permits continued participation.

Rec. 37

That implementation of the Pension Benefits Act and the amended E.S.A. Regulation with respect to pensions be monitored carefully; and the relationship between these provision and the Ontario Human Rights Code be studied.

Rationale

The **Pensions Benefits Act** and the amendments to the **E.S.A.** Regulation are intended to remove all differentiations on the basis of sex that do not provide equal benefits, in respect of employment after January 1st 1987. It will be important to monitor the experience that accumulates under these provisions to ensure that the legislative intent is in fact implemented.

Rec. 38

That the interministerial workgroup on insurance advise the public forthwith of the continuing discrimination which exists in the insurance industry, and bring forward remedial legislation immediately.

Rationale

Notwithstanding the progress made with respect to pensions, we are advised that discriminatory differentiations on the basis of sex and other prohibited grounds remain widespread in the insurance industry. We urge the Interministerial Workgroup on Insurance to inform the public as to the extent of the problem and to bring forth remedial legislation as soon as possible.

LEAVE FOR CHILDCARE AND FAMILY RESPONSIBILITIES

Pregnancy Leave

Employment equity and the Government's stated commitment to support for workplace and family responsibilities for workers of both sexes make it imperative that new minimum standards with respect to childcare and family responsibilities be enacted immediately. These include significant reform of the pregnancy leave standard, and new provisions for childcare leave, adoption leave, bereavement leave, and leave for personal needs.

Rec. 39

That Part XI of the E.S.A. be repealed and replaced with a new standard to provide pregnancy leave after six months of service (including service accumulated indefinitely by part-time, seasonal, casual, elect to work, and other non-regular workers).

Rationale

The Advisory Council is of the opinion that six months of service with an employer (including part-time, casual, seasonal and other non-regular employment, accumulated indefinitely) should be sufficient qualification to qualify for pregnancy leave.

Rec. 40

That the pregnancy leave standard include:

a) a prohibition against any employer requiring an employee to take a leave of absence because of pregnancy, except as provided in (b);

b) where, the employee is unable to perform the essential duties of her job because of pregnancy, a duty on the employer to make reasonable accommodation, and only if an alternative appropriate position is not available (proof thereof on the employer) should the employee be required to start her leave.

Rec. 41

That the new pregnancy leave standard provide that all employees are entitled to:

a) the accumulation of all pension, health, disability, seniority and other benefits during the leave, and recognition that the term of the leave is a period of "continuous service" for the purpose of any service requirements (statutory or otherwise);

b) continuation of all employer's contributions to all pension or other benefit plans, so long as the employee continues her contributions as well;

c) written notice, in a timely fashion, of every employment promotion or training opportunity that arises during the leave;

d) protection from any dismissal, suspension, lay-off, demotion, discipline, denial of promotion or training because of pregnancy application or for taking pregnancy leave. Such protection to continue for six months after the employee's return to work.

Rationale

The mechanics of how the pregnancy leave provision works now leaves gaping holes which undermine the protection now available to pregnant women in the workplace. In our opinion the provisions should be clearly identified within the Act.

Rec. 42

That the pregnancy leave standard provide for the right to pregnancy leave of 18 weeks.

Rationale

The Advisory Council acknowledges that 17 weeks is not a long time for a woman to recover from the biological demands of childbirth. The Provincial Government should Lobby with the Federal government to extend the maternity benefits now available under U.I.C from 17 to 26 weeks, and the level of benefits from 60% of insured earnings to 95%. [28] Pending an extension of federal U.I.C. maternity benefits, we propose that the pregnancy leave protection in Ontario extend for 18 weeks, similar to that which currently exists in Alberta, British Columbia, Quebec and Saskatchewan.

Leave for Parents with Childcare Responsibilities

Rec. 43

That the new Part XI of the E.S.A. provide the right to leave for parents with childcare responsibilities, to be taken by either parent, for up to 35 weeks, to kick in (at the choice of the employee) at the birth of the child, when the child comes into the care of the employee, or when the mother finishes her pregnancy leave; and as well, there should be similar protections as recommended for pregnancy leave.

Rationale

The Advisory Council is strongly of the view that minimum labour standards should facilitate equality between the sexes, and encourage the participation of men, as well as women, in the upbringing of their children.

Adoption Leave

Rec. 44

That the new Part XI of the E.S.A. provide the right to adoption leave for either parent for up to 35 weeks after placement of the child with the employee for adoption; and as well, there should be similar protections as recommended for pregnancy leave.

Rationale

This type of parental leave should be equally available to parents on the adoption of a child. That Ontario has no such provision at present is likely in violation of the Charter.

Leave for Personal Needs

Rec. 45

That Part XI of the E.S.A. provide for all employees, without any service qualifications, the right to unpaid leave for personal reasons (including family responsibilities) of up to 10 days per year; and as well there should be similar protections as recommended for pregnancy leave.

Rationale

We suggest that unpaid personal leave or family responsibility leave up to a maximum of 10 days per year should be available under the E.S.A. for all employees with no prior service requirement.[29]

Bereavement Leave

Rec. 46

That Part XI of the E.S.A. provide for all employees, without any service qualification, the right to paid bereavement leave of a minimum of three working days for all employees on the death of a family member ("family" to be defined very broadly to accommodate all types of contemporary families); and as well, there should be similar protections as recommended for pregnancy leave.

Rationale

No event is more traumatic than the death of a family member. The Advisory Council is of the view that all employees, regardless of service qualifications, should have the benefit of minimum paid bereavement leave on the death of a member of the family.

ADDITIONAL LEAVE STANDARDS

Educational Leave

Rec. 47

That the E.S.A. include provisions for employees who wish time off for an approved education leave, and that all employees with 2 years of service, be eligible, including service accumulated by part-time and non-regular workers. The education leave should provide job protection, continuation of seniority and other benefits, continued employer's contributions to benefits and deemed "continuous service".

Rationale

The Advisory Council is strongly of the opinion that minimum labour standards legislation which seeks to promote employment equity, should include a provision for educational leave.

Women who have interrupted work experience, or who re-enter the labour force after raising their children or after a marital breakdown, often need to upgrade their skills very quickly. Women seeking better jobs or promotion need the training to qualify for better positions. Yet women, including the majority who have the double burden of working and household (including childcare) responsibilities, have neither the time nor the resources to pursue part-time or evening educational opportunities. They need training during normal working hours, with time off from their regular responsibilities and with a guarantee that their job will not be jeopardized.

Leave for Religious Observance

Rec. 48

That the E.S.A. be amended to ensure that employers allow employees to observe their religious days by giving them leave without pay.

Rationale

The Advisory Council believes that the E.S.A. should address the situations of workers who are subject to religious days of observance that vary from the traditional Christian ones which are reflected in many of our public holidays. The current lack of flexibility under the E.S.A. has the effect of denying the opportunity to members of other religious groups to honour their days of religious observance while imposing upon them holidays which are of no personal significance to them.

Sick Leave

Rec. 49

That a sick leave standard be added to the E.S.A. to provide that all employees, with three months of service (including service accumulated indefinitely by part-time, seasonal, casual and other non-regular employees) have the right to:

a) **protection from dismissal, suspension, layoff, demotion or discipline because of any absence due to illness or injury, where the absence does not exceed 12 weeks or as required by a workers' compensation rehabilitation program, and where a medical doctor certifies that the worker was incapable of working;**

b) **accumulation of all benefits and seniority during the leave, continued contributions by the employer to any pension or other benefit plans (on the condition that the employee maintains contributions as well), and deemed "continuous service" during the absence;**

c) **reinstatement in his or her previous job unless the employee is incapable of performing the essential duties of that job, whereupon the employer should be obliged to provide an alternative equivalent job. Only if the employer proves that no such job is available, should the legislation permit re-assignment to a different job with different conditions of work;**

d) **Six days of fully paid sick leave per year.**

Rationale

Clearly there is a need for a new standard to provide some job security for sick employees. The **Canada Labour Code** prohibits any dismissal, suspension, layoff, demotion or discipline because of absence due to illness or injury if the employee has completed three consecutive months of continuous service, the absence does not exceed twelve weeks (or as required by a worker's compensation rehabilitation program), and the worker provides a medical certificate certifying that the employee was incapable of working during the period of the absence. This standard also provides for the accumulation of benefits and seniority, the continuation of employer's contributions, and deemed "continuous employment" during the absence. Upon return to work, the employee is to be reinstated in his or her regular position unless unable to perform the work done prior to the absence.[30]

A similar standard should exist in Ontario.

Leave for Public Office

Rec. 50

That the E.S.A. provide leave for those seeking public office, and that such a provision include:

a) job protection for the duration of any nomination and election campaign;

b) the same continuation of benefits, seniority, employer's contributions, and deemed "continuous employment" as with the pregnancy, childcare and sick leave standards.

Rationale

It is acknowledged that women do not have the same access as men to the funding required to seek political office. Even if a woman can accumulate sufficient funds to run for office, taking time off work may cost her job. So long as women struggle with this structural inequality, the number of women who can seek public office will necessarily be limited.

JOB SECURITY STANDARDS

Notice of Termination

The **E.S.A.** also governs the notification which employees should be provided when employment is being terminated. These standards for notification allow exceptions in certain circumstances, which include: wilful misconduct, disobedience or wilful neglect of duty, etc.

Rec. 51

That s. 40(1) of the E.S.A. be amended so that provisions also specify that part-time, seasonal, casual, elect to work, and all non-regular employees would be able to accumulate indefinitely, the service credits necessary to qualify for notice of termination of employment.

That the domestic workers on temporary status, arriving from a foreign country, be provided one weeks notice of termination or pay, with no service requirement if their employment contract is terminated within thirty days of their arrival in Canada.

Rationale

To qualify for receipt of a notification of termination, an employee must have worked for three months. This three month qualification period also should be eliminated. No such period is required by the courts. In addition, the qualification period discriminates against part-time and non-regular workers. It also provides scope for manipulation of employees at no cost to the employer.

Rec. 52

That all exemptions relating to notice of termination be examined, to the extent possible they should be eliminated, and those that remain should be included in the statute itself.

Rationale

Any exclusions which are justified should be included in the legislation itself, so that they are readily accessible to all concerned. For example: s.40(3) excludes from the right to notice of termination employees employed for definite term or task. Yet s.16 of the Regulation makes it clear that a person employed for term or a task exceeding twelve months shall be deemed not to be employed for a definite term or task, and those employed for three months or more after completion of the term or task shall be deemed to have commenced at the beginning of the term or task. This is an important qualification which should be set out in the statute itself.

Severance Pay

Rec. 53

That s.40(a)(1a) of the E.S.A. be amended to provide that severance pay be payable to all employees who have had one year of continuous service with the employer, without regard to the number of employees laid off or the size of the employer's payroll.

Rationale

At present, the right to severance pay is not universal, but depends on the number of employees laid off or the payroll of the employer. In 1987, severance pay was extended to all employees with five or more years of service who are terminated by an employer with a payroll of $2.5 million or more. Employment equity demands that severance pay should not be determined by the number laid off or the employer's payroll.

Rec. 54

That s.40(a)(2)(a) of the E.S.A. be amended to provide that severance pay applies to all workers including seasonal, non-regular, casual and elect to work employees. These employees should be entitled to qualify by service to the same employer accumulated indefinitely.

Rationale

The present provision only applies to "regular full-time" and "regular part-time" employees.[31] We believe that severance pay should be payable to all employees and the existing exemption excluding elect to work employees should be deleted.

Rec. 55

That s.40(a)(3)(d)(e)(f) of the E.S.A. excluding retirees, construction workers, etc. and elect to work employees, be deleted.

Rec. 56

That contract workers employed for a definite term or task be entitled to qualify for severance pay in the same manner as they do to notice of termination under the existing Regulation.

Rationale

There seems no justification why older workers who retire upon termination, should be deprived of their accumulated severance pay. Most private and public pension plans are not so generous that the employee can afford to forfeit their severance pay entitlement. Women particularly have few, or inadequate, pension provisions. Similarly, the exemption excluding: employees "whose employer is engaged in the construction, alteration, maintenance or demolition of buildings, structures, roads, sewers, pipelines, mains, tunnels or other workers where the employee works at..." should be deleted.

Contract workers employed for a definite term or task should also have the same benefit kicking in as does the existing provision with respect to notice of termination.

Rec. 57

That s.13 of the E.S.A. be amended to clearly include that contracting out, or loss of contract situations come within the "sale of business" concept for the purpose of continuity for service qualifications with the successor employer, or for immediate payout of notice of termination and severance pay.

Rationale

The problem of continuity of benefits in the context of successor employers has created major problems, particularly with respect to severance pay and notice of termination. S.13(2) of the **E.S.A.** provides that when an employer "sells his/her business to a purchaser who does not hire the previous employees, the seller must comply with Part XII requirements for notice of termination and severance pay. Because the costs can be significant, however, there is considerable scope for manipulation of the principle so that workers can be deprived of their benefits.

The **E.S.A.** is unclear whether the provision extends to contracting out situations, and to cases where an employer loses a contract. In these cases, the employees may lose the benefit of their accumulated service.

In certain sectors employing a high percentage of women, including building cleaning and institutionalized food services, contracting out has become all-pervasive.

Rec. 58

That s.14 of the E.S.A. be amended to ensure that the wages of contract employees have the same priority as wages of regular employees.

Rationale

Section 14 of the E.S.A. guarantees that "wages shall have priority to the claims for rights and be paid in priority to the claims or rights"; this should be extended to all workers.

Unjust Dismissal

Rec. 59

That the E.S.A. provide protection for all workers from arbitrary dismissal; and the legislation provide that no employer dismiss or suspend an employee with three months service (including accumulated service) without just and reasonable cause; and that the unjust dismissal provision include:

a) a duty on the employer to provide written reasons for the dismissal upon written request from the employee;

b) a right to complain to the Employment Standards Tribunal within ninety days of the dismissal;

c) provision for appointment of an employment standards officer to attempt a settlement and, failing that, for appointment of an arbitrator to assess the nature of the conduct causing the dismissal or suspension, and to determine whether the action was "just" and "reasonable" in the circumstances of the individual case;

d) power in the arbitrator to order compensation, reinstatement, or any other remedy that is "just" and "reasonable" in the circumstance.

Rationale

At present, there is no law which protects the worker from arbitrary dismissal itself. It is this reality which makes many employees, particularly those with the least bargaining power and the greatest dependency, vulnerable to employer coercion, and which undermines the security of senior employees after many years of faithful service.

The "unjust dismissal" protection under the **E.S.A.** should extend to all non-unionized workers with three months of service to an employer. Part-time, seasonal, and non-regular workers should be entitled to accumulate their periods of service. The legislation should provide that no employer shall dismiss or suspend any employee who qualifies without just and reasonable cause.

Protection Against Reprisals

Rec. 60

That s.9 of the E.S.A. with respect to protection in garnishment and attachment situations be extended to include protection from any threats, discipline, penalties, intimidation or coercion; and

That enforcement of the provisions against reprisals and violations of provisions of the Act be removed from the context of quasi-criminal proceedings in Provincial Offence Court, and be within the exclusive jurisdiction of a newly-constituted Employment Standards Tribunal with powers to order reinstatement, restitution, and any other appropriate remedy, and to impose substantial penalties; and

That s.57, 59 and 60 of the Act and s.39(h) of Bill 114 be amended to reflect this new structure.

Rationale

In garnishment situations, the prohibition in s.9 of **E.S.A.** only extends to protection from dismissal or suspension. This clearly needs to be extended to be consistent with the more general protection in s.57 against reprisals for enforcement of the Act, and in the new Bill 114 s.39(h) which also prohibits reprisals against an employee who refuses "unreasonable" Sunday work. In addition, the right to refuse overtime work should be beefed up, and made enforceable.

S.57(2) expressly authorizes a provincial judge to order reinstatement or compensation for loss of wages and benefits, or any other action that the employer should take or refrain from taking, and s.59(2) and s.60(3) authorizes an order for payment of any wages due. All these remedies, however, depend on a successful prosecution in provincial offences court. The track record of prosecutions to date indicates that this is a very unsatisfactory means of enforcement. Instead of looking to the courts, violation of the provisions of the Act should be the basis for complaints to a new Employment Standards Tribunal with specialized expertise and with wide powers to order restitution and reinstatement, and to impose significant penalties.

Immediate access to a remedy on behalf of the employee is a first priority. Thereafter, if appropriate, penalties can be assessed against the employer. To take this second step, however, requires the expertise and authority of a permanent Tribunal.

Sexual Harassment

Rec. 61

That protection against sexual harassment in the workplace be provided in the E.S.A. and remedies provided under the Act as well as the Workers' Compensation Act; and

That the E.S.A. contain a broad definition of sexual harassment to include sexual assault, abuse, innuendo, exposure to pornography, pornographic abuse, or the production of pornography.

Rationale

Protection against sexual harassment in the workplace is presently provided only under the **Ontario Human Rights Code**. Similar protection should be provided in the **E.S.A.**

Moreover, the **E.S.A** should set out a comprehensive definition of sexual harassment, prohibit all sexual harassment, provide protection from reprisals, and set out the remedies for any violation. These remedies should also be contained in the **Ontario Human Rights Code** as well as the **Workers' Compensation Act**. Remedies should include damages, education programs and a compliance procedure.

UNIVERSAL RIGHT TO COLLECTIVE BARGAINING

The right to form unions, bargain collectively, and benefit from the procedures and structures characteristic of contemporary industrial relations, is considered fundamental in the Canadian community. Yet, even today, large groups of workers, some among the most poorly paid and the most disadvantaged, are denied by statute the right to organize and bargain collectively.

Rec. 62

That the E.S.A. provide that all workers (except those in a confidential relationship with management) have the right to form unions and to bargain collectively, and that there be no limitations on the bargaining agenda, except as dictated by public policies against discrimination; and

That the Ontario Labour Relations Act, the Crown Employees Collective Bargaining Act, the Public Service Act, and all other statutes which impose limitations be amended to conform with this basic standard.

Rationale

The **Ontario Labour Relations Act** itself expressly prohibits domestics in private homes, and agricultural workers from forming unions, and, because the right to organize depends on the definition of "employee", contract workers are also excluded from the benefits of unionization. Under the **Crown Employees Collective Bargaining Act** and the **Public Service Act**, there are numerous limitations on collective bargaining. Part-time academic and support staff in community colleges are denied the right to organize. Temporary employees unless employed continually for a period of six months or more, cannot join unions. Among those Crown employees who can unionize, bargaining about pensions is prohibited.

RIGHT TO EMPLOYMENT EQUITY

Rec. 63

That the Ontario Government table mandatory employment equity legislation, to include:

- **a statutory duty on all employers to implement employment equity programs including data accumulation;**
- **goals and timetables for action;**
- **effective sanctions for failure to meet requirements;**
- **enforcement through complaints and systemic remedies.**

Rationale

Various affirmative action initiatives have been attempted, including internal programs within the public service, and government programs directed at encouraging employers in the private sector to initiate their own programs. The Royal Commission on Employment Equity under Judge Rosalie Abella found, however, that the federal government's voluntary programs have had little impact on the composition of the public service workforce, and have been equally ineffective in the private sector.[32]

The federal **Employment Equity Act**, proclaimed in August 1986, is a good example of legislation which falls far short of the standards necessary for effective affirmative action. The only requirement is that the large employers covered by the legislation file the relevant data.

Coverage is limited, the "duty" to implement employment equity and to prepare a plan has no penalty for failure to comply and, there is no requirement that plans be filed with the government or available to the public.

The Advisory Council is strongly of the opinion that mandatory employment equity legislation is essential if women, people with disabilities, racial minorities and Aboriginal persons are to achieve equality in the workplace.

Rec. 64

That the Ontario Government implement forthwith a comprehensive contract compliance program, making employment equity programs mandatory for all Government suppliers, for all the broader public sector and those funded with provincial funds, and for employers who provide goods and services to the broader public sector and to publicly-funded bodies.

Rationale

A first step in the direction of employment equity should be immediate implementation of a comprehensive contract compliance program so that the

leverage of purchasing power with public funds can be used to ensure implementation of employment equity programs.

Public funds should be used, wherever possible, both directly and indirectly, to promote employment equity.

ADMINISTRATION OF MINIMUM LABOUR STANDARDS

Rec. 65

That the Government commission an independent administrative law specialist to conduct a full analysis of administrative law and procedural deficiencies in the E.S.A., and should make this report available for public discussion.

Rationale

The present scheme for the administration and enforcement of employment standards was conceived in an earlier era, when standards were relatively simple and enforced by simple accounting practices. That era is no more.

Powers of the Director

Rec. 66

That wherever possible, standards and procedures under the E.S.A. be structured to avoid the need for intervention or discretionary decision-making by the Director. Where the Director must retain such powers, structuring the exercise of discretion.

Rationale

At present, the Director under the Act is omnipotent. Apart from the Director's overall responsibility for the administration of the Act and the Regulations and for the supervision and direction of the employment

standards officers, she/he has the power to issue, revoke or suspend homeworker permits, issue overtime permits, approve longer workdays, require payment of vacation pay, approve alternative vacation or vacation pay arrangements, administer trust funds, approve severance pay by instalments, approve or refuse to approve prosecutions, supervise the review and the appeal procedure, initiate her/his own reference to a referee, and appoint the referees to conduct hearings. Updated employment standards and new administrative structures will in many cases make the existing intervention of the Director unnecessary.

Independent Employment Standards Tribunal

Rec. 67

That the existing ad hoc referee system be abolished, and an Independent Employment Standards Tribunal created. The Tribunal should have exclusive jurisdiction to make final determinations on all matters of procedure and substance under the E.S.A.

Rationale

At present all appeals and references under the **E.S.A.** are referred to a panel appointed by the Minister of twelve ad hoc referees. The Director selects the particular referee for individual hearings. As the Branch itself is one of the parties appearing before the referee, this is a gross conflict of interest.

Each referee has equal authority with the others; prior decisions of other referees are not binding as precedents; referees disagree on a range of issues resulting in unpredictability, inconsistency and unequal treatment under the law.

As the number of appeals to referees has increased significantly in recent years, and the issues under appeal have become more complex, this situation cannot continue. The time has come for an independent, full-time

Employment Standards Tribunal with extensive powers. As the Tribunal will have specialized expertise, it should have exclusive jurisdiction to make final determinations of all matters relevant to standards and procedure under the E.S.A. In addition, it should have full powers to order individual and systemic remedies, impose penalties, and order the payment of costs.

Equal Rights to Appeal

Rec. 68

That the E.S.A. be amended to provide that employers and employees have equal rights to appeal to the Employment Standards Tribunal. The appeal period should extend for 30 days, and the Tribunal should have the authority to extend the appeal period on preliminary motion.

Rationale

At present, employers can appeal adverse decisions of an employment standards officer, employees cannot. Employers have a right to a hearing before a referee, employees can only request a review by a second employment standards officer. Employers have 15 days "or such longer period as the Director may for special reasons allow" after delivery or service of a decision to file for an appeal. Employees must file for review within 15 days after the decision is mailed.

ENFORCEMENT OF THE ACT

Rec. 69

That the Ontario Government allocate staff and resources to the Employment Standards Branch to implement a pro-active approach to enforcement and compliance; and

That routine spot audits in problem industries be reinstituted on a regular basis, and extended company audits arising out of complaints be increased; and

That special attention be addressed to sectors who are difficult to reach, such as homemakers, multi-lingual and multi-cultural groups, and those who are illiterate.

Rationale

The new labour standards will be undermined if enforcement powers and policies remain as they are.

First, and foremost, the large caseload of individual complaints has forced the Branch to conduct most initial investigations by telephone, and to do company visits in only about 40% of the cases. Staff at present have little time to do more than "service" the caseload. The Task Force on Hours of Work reports that, although routine investigations are increasingly uncommon, when they do occur they uncover violations in about one-third of cases, which suggests the possibility of substantial non-compliance with the Act.[33]

There is a need to make a commitment to pro-active enforcement of the legislation. This involves the allocation of staff and resources with the time and the mandate to target key problem areas[34], to conduct routine audits in those sectors, and to do specialized intensive investigations following up on individual complaints. A pro-active unit, with specialized expertise could also devise ways to encourage compliance in those sectors (e.g. homeworkers) that now are difficult to reach.

Second, there is a need to beef up the penalties for non-compliance. At present, most employers need only pay out whatever wages are owing; those who wait for an Order-to-Pay are hit with only the 10% penalty imposed by s.47(1)(c) of the Act; those who want an appeal can do so secure that they will not be hit with costs; and those are convicted in court pay token fines, if any at all. Clearly this makes a mockery out of the Act.

Rec. 70

That penalties for violation of the E.S.A. be increased on an incremental scale; a warning that payment is required within 15 days to be issued in cases where wages are found to be owing; and failure to pay trigger an Order-to-Pay with an automatic statutory penalty of 50-100% of the amount due; and

That the Employment Standards Tribunal have express power to order an appellant pay the costs of an appeal, including the costs of the Tribunal, the Branch lawyer, and the employee; and the Tribunal have the authority to impose substantial monetary penalties on violators of the Act, or persistent offenders; and

That the Branch institute a tracking system to monitor persistent offenders; and

That the E.S.A. provide expressly that the employment standards officer and the Tribunal both have the power to order reinstatement, including interim reinstatement, and the retroactive payment of lost wages and benefits.

Rationale

To deter frivolous appeals (and the current high percentage of "no shows" by employers), the Tribunal should have express statutory authority to order that costs be paid by the appellant. The informal tracking system developed within the Branch should be automated and made accessible to all officers.

Given that many of the new employment equity standards relate to leaves of various kinds, it is imperative that the employment standards officer have the power to make an interim order for reinstatement. Alternatively, the Tribunal should have the power to order reinstatement and retroactive compensation for loss of wages and benefits.

Rec. 71

That high profile, multi-lingual public education and publicity about minimum labour standards be instituted on a regular basis, to include:

- **printed material;**
- **radio, television and newspaper spot announcements and more extended coverage;**
- **an automated summary information telephone line;**
- **systematic publishing of all Tribunal decisions;**
- **press releases on significant settlement and Tribunal decisions; and**

That the Branch prepare an authorized summary of basic employment standards which employers by statute have a duty to post in all workplaces.

Rationale

A pro-active approach requires high profile and effective public education programs including systematic and strategic publicity about cases under the Act. Such public education programs inform employees most graphically about their rights, and are an effective reminder to employers regarding their responsibilities under the Act.

CONCLUSION

Clearly, the minimum labour standards needed to promote employment equity, pro-active enforcement and the necessary compliance measures will require significantly more resources than are now allocated to the administration of employment standards. The Ministry Estimates indicate the priorities which appear to exist.

In 1988-1989, nearly 16.3% of the provincial Labour Ministry budget was allocated to service the employment contracts of the unionized 40% of the Ontario workforce. By contrast, 7.8% of the budget went to promote and enforce minimum labour standards for the unorganized majority. We do not begrudge unionized workers access to this mechanism, but merely observe that the silent majority of workers, those who are unorganized and most disadvantaged, get very little.

We are convinced that significant steps can be made towards the achievement of the Government's stated commitment to employment equity through the implementation of our recommendations. We recognize that they are not by any means all-encompassing, but we are hopeful that they will provide the spark for meaningful change.

ENDNOTES

1. Donald J.M. Brown, Q.C. Final Report of the Commission of Inquiry into Wage Protection in Insolvency Situations, Toronto, October 1985.

2. The statistics are derived from George Radwinski, **Ontario Study of the Service Sector**, 1986.

3. Rostew and Cameron, **Free Trade in Manufacturing**, pp.14-16.

4. The General Regulations 285, Regulation 281 re Ambulance Service Industry, Regulation 282 re Benefit Plans, Regulation 282 re Domestics, Nannies and Sitters, Regulation 282 re Fruit, Vegetable, and Tobacco Harvesters, Regulation 286 re Termination of Employment and Regulation 440/82 re Residential Care Workers.

5. **E.S.A.** s.3,4.

6. **Ontario Labour Relations Act**, s.1(1)(h)(i).

7. **Working Times: Report of the Ontario Task Force on Hours of Work and Overtime**, May 1987, Vol. 1, p.31.

8. The new **Pension Benefits Act, 1987**, for example, gives part-time workers the option of joining existing employer pension, only if the part-time worker earns $9,000.00 or works 700 hours per year.

9. Legislation and practice with respect to the organization of labour unions also discriminates against part-time employees. The Ontario Public Service Employees Union, for example, is prohibited by law from organizing those employed less than 1/3 the normal hours of work or those employed less than six months. The policy of the Ontario Labour Relations Board is to certify separate bargaining units for part-time workers employed less than twenty-four hours per week. Such laws and policies contribute to what Julie White calls a "ghettoization" of part-time workers, relegating them to a secondary labour force, separated from regular (perhaps unionized) employees, leaving them difficult to organize, unequal and vulnerable to exploitation. Julie White, **Women and Part-Time Work**, 1983, p.60.

10. **E.S.A.** s.63(1)(2).

11. Ont. Reg. 285, s.9(1) para 1; Ont. Reg.284, s.3.

12. Ont. Reg. 285, s.9(1) para.2.

13. Ontario Ministry of Labour, Research Branch, "Survey of Tips and Related Practices in Licensed Establishments" February 10, 1981.

14. **E.S.A.** s.1(p)(i).

15. The problems with the non-payment of overtime wages to domestics is discussed elsewhere.

16. **Working Times: The Report of the Ontario Task Force on Hours of Work and Overtime**, May 1987, p.31.

17. **Ibid.**

18. **E.S.A.** s.18.

19. Ont. Reg. 285, s.2(2).

20. For a complete discussion of the treatment of domestics under minimum labour standards legislation in Ontario and in other jurisdictions, see Monica Townson, **Domestic Workers and the Employment Standards Act, A report prepared for the Ontario Task Force on Hours of Work and Overtime, September 1987.**

21. Ont. Reg. 285, s.1(1)(b), s.3, s.14. They are also exempt from the Paid Holidays and Paid Vacations standards.)

22. Employment and Immigration Canada (March 1983) quoted by Townson, p.33.

23. Labour Canada Survey of Wages and Working Conditions (October 1984) "Private sector" in this data refers only to employees covered by the existing **E.S.A.**; those excluded from the standard by the Act or Regulations are not included.

24. These were widely canvassed in the public hearings before the Standing Committee examining Bill 154, and are documented by the Pay Equity Commission itself. They include the failure to provide explicitly equal pay for work of equal value; the limited coverage (excluding small business, differential treatment of firms with 10 - 99 employees, gender predominance, the lack of a male comparison group, numerous exemptions and exclusions); the nature of pay adjustments and the delay in payouts; the limited rights for unorganized workers; the need for wage equity funds.

25. s.12 of the E.S.A. already sets a precedent by treating all related activities as one employer for certain purposes under the Act.

26. **Sault Ste Marie Board of Education**; see also the decision of Referee E. Norris Davis in **National Utility Service (Canada) Ltd.** July 27, 1987.

27. We would have thought that the definition of "marital status" in s.1(i) of the Regulation ("includes the condition of being an unmarried person who is supporting in whole or in part a dependent child or children....") could apply to homosexual families.

28. See the discussion of this and other proposals for a national system of paid parental leave in **Integration and Participation: Women's Work in the Home and Labour Force**, Canadian Advisory Council on the Status of Women, 1987, pp. 10 - 15. They quote a recent study which noted that Canada ranked twenty-second out of twenty-three countries in terms of the level of benefits provided to women on childbirth. For a useful comparison of philosophical approaches, and the provisions of both legislation and collective agreements, see Laurie Schwartz **Parental Maternity Leave Policies in Canada and Sweden**, Industrial relations Centre, Queen's University, 1988.

29. We note that at least seven European countries provide statutory leave protection for family reasons, including West Germany (five days), Greece (6-10 days depending on the number of children), Portugal (30 days for an ill child), Sweden (short periods of paid time at the discretion of the employer, longer unpaid leave at the request of employee).

30. **Canada Labour Code**, s. 61.4

31. **E.S.A.** s. 40a(2)(a)

32. Judge Rosalie Abella, **Equality in Employment: A Royal Commission Report**, Ottawa, October 1984, pp. 195, 197.

33. **Working Times**, Vol. 1, p.50.

34. Note the conditions described, and the demand for sweeps, in **Chinatown Restaurant Workers Needs Assessment** (published by Advisory Committee under sponsorship of the University Settlement House, May 1988).